

STATE OF COLORADO

Department of State

1700 Broadway
Suite 250
Denver, CO 80290



Mike Coffman

Secretary of State

William A. Hobbs

Deputy Secretary of State

SECRETARY OF STATE'S "ELECTION WATCH LIST" POLICY FOR SPECIAL SUPERVISION OF COUNTY ELECTION ADMINISTRATION

Introduction

The Secretary of State recognizes that in most counties of this State, elections are conducted in accordance with the highest standards of the law and in a manner that promotes confidence in the integrity of elections.

However, from time to time issues and concerns arise with respect to the administration of elections in particular counties. It is therefore necessary to establish a consistent policy on how those issues will be addressed in an effective and fair manner.

Purpose

As the State's chief election official, the Secretary of State is responsible for ensuring that elections are conducted throughout the State in a manner that promotes voter confidence and the integrity of elections. In addition, the Secretary of State is responsible for ensuring that elections are conducted in accordance with state and federal constitutional, statutory, and regulatory requirements, including the following:

- The state election laws, including the "Uniform Election Code of 1992", Articles 1 to 13 of Title 1, C.R.S., and Articles 40 and 41 of Title 1, C.R.S.
- The federal "Help America Vote Act of 2002", P.L. No. 107-252.
- The federal "National Voter Registration Act of 1993", 42 U.S.C. sec. 1973gg.
- The federal "Uniformed and Overseas Citizens Absentee Voting Act", 42 U.S.C. sec. 1973ff *et seq.*
- The federal "Voting Accessibility for the Elderly and Handicapped Act", 42 U.S.C. sec. 1973ee)

The purpose of this policy is to carry out that responsibility by establishing a process by which the Secretary of State will identify counties that have not met the legal requirements governing elections, and establishing a process by which the Secretary of State will work with those counties to ensure the proper administration of their elections.

Under this policy, identified counties will be subject to stringent review and oversight by the Secretary of State. Such counties will be placed on the Secretary's "Election Watch List", which is tantamount to a probationary period, during which county officials and the Secretary of State's Office will work together to remedy the identified issues.

This policy is meant to be corrective in nature, as opposed to punitive. The Secretary of State is committed to working cooperatively with identified counties to address all actual and potential issues.

Authority

The federal “Help America Vote Act of 2002” (“HAVA”), in order that its requirements may be effectively and uniformly implemented, mandates a greater role for the state governments and, in particular, the chief election official of each state, in overseeing and coordinating elections and in enforcing and implementing uniform standards in elections. In Colorado, the Secretary of State is the chief state election official and, in that capacity, is charged by HAVA and its implementing state statutory provisions (Section 1-1.5-101 *et seq.*, C.R.S.) with responsibility for supervising the conduct of elections and for enforcing and implementing the provisions of both HAVA and the State Election Code.

The State Election Code imposes specific responsibilities on the Secretary of State to ensure the integrity of elections in this State, and those provisions also empower the Secretary of State to take necessary action to carry out those responsibilities. Some of the express statutory powers of the Secretary of State include the following:

- To inspect and review the practices of county clerk and recorders and other election officials. Section 1-1-107 (2)(b), C.R.S.
- To investigate any allegation of noncompliance with the election code. Section 1-1.5-104 (2)(a), C.R.S.
- To compel the testimony of witnesses and the production of documents from any county or local official involved in the conduct of an election. Section 1-1.5-104 (2)(a)(I), C.R.S.
- To send official observers to any county in the state to examine the conduct of any aspect of any election giving rise to an allegation of noncompliance and to require the clerk and recorder of the county to assume the costs associated with the travel and other expenses of any observers sent to the county. Section 1-1.5-104 (2)(a)(II), C.R.S.
- To enforce the provisions of the election code by injunctive action brought by the attorney general in the district court for the judicial district in which any violation occurs. Section 1-1-107 (2)(d), C.R.S.
- To issue appropriate orders to county or local election officials in connection with the proper administration, implementation, and enforcement of the federal Help America Vote Act. Section 1-1.5-104(1)(d), C.R.S.
- To apply for a court order giving the Secretary access to all pertinent election records used in conducting an election and authorizing the Secretary to conduct the election whenever any interested party has reasonable grounds to believe that an election is not being conducted in conformity with the requirements of the election code. Section 1-1.5-104 (3), C.R.S.

Process

Triggering Events

Whenever the Secretary of State's office receives significant and reliable information calling into question the willingness or ability of a county to conduct its elections in accordance with the requirements of election laws and rules, such county may be placed on the Secretary of State's "Election Watch List."

A county may be placed on the Election Watch List when it appears that the county has failed to meet specific and material legal requirements in conducting its elections or that the county has failed to properly manage its elections in some material way. If a county has violated election statutes or mismanaged the election to the point of disenfranchising voters, that county will be placed on the Election Watch List.

Other possible events that may lead to inclusion on the list include, but are not limited to, the following:

- Failure to file required documents:
 - Counties that fail to file statutorily required documentation with the Secretary of State, such as the following: Security Plan; Mail Ballot Plan; Post-Election Audit; Canvass; NVRA requirements; Method of Voting File; etc.
- One or more credible complaints alleging violations:
 - HAVA or Election Complaints filed with the Secretary of State;
 - Verbal or written complaints from county officials, governing boards, political party representatives, observers, watchers, vendors, or voters.
- Extensive problems within the county:
 - Counties appear to be consistently experiencing difficulties with specific areas of election administration. Examples: programming; issuance of ballots; etc.
 - **Merely calling the Secretary of State with regular questions will NOT result in placement on the Election Watch List.** The Secretary encourages open communication between county officials and Department Election staff in order to proactively correct potential problems. Calling the Secretary of State demonstrates the commitment of county election officials to carry out elections in accordance with high standards.
- Failure of the county clerk and recorder or election employees to obtain and maintain certification in accordance with section 1-1-302, C.R.S.

Prior to placing a county on the election Watch List, the Secretary of State will conduct such inquiry or investigation as may be appropriate under the circumstances, including providing an opportunity for the county to provide information relevant to the Secretary's decision whether to place the county on the Election Watch List.

Placement onto the Election Watch List

Counties on the Election Watch List will receive written notice outlining specifically named deficiencies that must be remedied within a time period specified by the Secretary. The notice will include a detailed plan outlining the specific issues that need to be addressed and the remediation required before removal from the list.

The Secretary of State's office will focus on the specifically identified deficiencies outlined in the notice, but reserves the right to amend the list of deficiencies if further issues come to light during the probationary period.

A copy of the notice will be provided to the governing body and chief executive officer of the county or city and county.

Requirements during Probationary Status

The Election Watch List will place the respective counties on a probationary status with the Secretary of State's office until their specific named deficiencies have been corrected.

Based upon the severity of the deficiencies identified, the Secretary of State may request the county to do any or all of the following:

- Utilize election observer(s);
- Provide periodic status updates;
- Submit progress reports;
- Participate in periodic conference calls;
- Host periodic announced visits by Secretary of State staff;
- Attend regular or special training sessions conducted by the Secretary's office;
- Engage in mentoring relationships with current or former election officials;
- Conduct or participate in mock election exercises;
- Provide such documentation as may be requested for review by Secretary of State staff.

To the extent possible, the Secretary of State's Election staff will work in partnership with county officials to remedy the specifically named deficiencies in as timely a manner as possible.

Correction of Deficiencies and Removal from the Election Watch List

Election monitors from the Secretary of State's office or official observers appointed by the Secretary of State may be assigned to a county on the Election Watch List to ensure compliance. Costs of such monitors or observers will be the responsibility of the county clerk and recorder.

In addition, the Secretary of State may verify compliance based upon documentation from the county confirming remediation of the deficiencies.

A county will be removed from the Election Watch List after a determination by the Secretary of State that all deficiencies have been rectified.

Sanctions

If a county on the Election Watch List fails to correct the identified deficiencies, then the Secretary of State may seek a court order giving the Secretary of State direct supervision over the conduct of the respective county's election and requiring the county to assume responsibility for all costs of such supervision. Where possible and appropriate, the Secretary of State will seek to obtain court approval through a consent decree or other means of cooperative effort with the county.

Subject to approval by the court, court-ordered direct supervision of a county's election will remain in place until the Secretary of State is satisfied that the named deficiencies are corrected.

Conclusion

By creating the "Election Watch List" the Secretary of State hopes to work in partnership with counties that have experienced challenges in conducting their elections, to ensure the voters of Colorado participate in well managed, accurate elections.